

G-008/GR-92-400 ORDER GRANTING MOTIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Application
of Minnegasco, a Division of
Arkla, Inc., for Authority to
Increase Its Rates for Natural
Gas Service in the State of
Minnesota

ISSUE DATE: November 10, 1992

DOCKET NO. G-008/GR-92-400

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PROCEDURAL HISTORY

On July 2, 1992, Minnegasco (or the Company) filed a general rate case.

On September 17, 1992, the Administrative Law Judge (ALJ) to whom the general rate case was referred, Judge Richard C. Luis, issued a Prehearing Order in the contested case proceedings. The Order established October 2, 1992, as the deadline for potentially interested parties to file requests for intervenor status in the rate case.

On September 18, 1992, Gas Aggregations Services, Inc. (GAS, Inc.) filed a petition to intervene in Minnegasco's general rate case. On September 28, 1992, GAS, Inc. served nine discovery requests on Minnegasco.

On October 1, 1992, Minnegasco filed its Motion to Enlarge Time to Object to the Petition to Intervene of GAS, Inc., and also its Motion to Deny GAS, Inc.'s Petition to Intervene.

After a motion conference was held, the ALJ issued his Order Dismissing GAS, Inc.'s Petition to Intervene and Order Certifying Motions to the Public Utilities Commission on October 16, 1992. Pursuant to Minn. Rules, Part 1400.7600, Judge Luis certified Minnegasco's Motion for Enlargement of Time to Object and Motion to Deny GAS, Inc.'s Petition to Intervene to the Commission for determination prior to the filing of the ALJ's report.

The matter came before the Commission for consideration on October 29, 1992.

FINDINGS AND CONCLUSIONS

I. The Timeliness of Minnegasco's Motions

Under Minn. Rules, Part 1400.6200, subp. 2, "any party may object to the petition for intervention by filing a written notice of objection with the judge within seven days of service of the petition..." Minnegasco was served with GAS, Inc.'s petition to intervene on September 21, 1992. Minnegasco was thus three days beyond its deadline for objection when it filed its Motion to Enlarge Time to Object and Motion to Deny GAS, Inc.'s Petition on October 1, 1992. No party objected to Minnegasco's untimely filings.

The Commission agrees with the reasoning of the ALJ, who accepted Minnegasco's motions despite their untimely filing date. The ALJ reasoned that this was a case of "excusable neglect" on Minnegasco's part. The utility was in the midst of answering over 400 data requests in September, when it was served with GAS, Inc.'s petition to intervene. Minnegasco stated that it did not realize the complexity or confidential nature of the information GAS, Inc. sought until it was served with GAS, Inc.'s data requests on September 28, 1992. Minnegasco then filed an objection to the petition on October 1, 1992, three days after the deadline for objection.

The ALJ also stated that no party would be prejudiced by Minnegasco's three day delay in filing an objection to GAS, Inc.'s petition to intervene. The deadline for filing a petition to intervene in the contested proceeding was September 30; the deadline for objection to a September 30 petition would thus be October 7. According to the ALJ, the October 1 objection filed by Minnegasco was therefore "well within the time frame set by the Administrative Law Judge for consideration of such motions." The Commission adopts the reasoning of the ALJ regarding the timeliness of Minnegasco's motions. The Commission will accept Minnegasco's late-filed motions.

II. The Merits of GAS, Inc.'s Motion to Intervene

The ALJ gave three main reasons for granting Minnegasco's motion to deny GAS, Inc.'s petition to intervene. The ALJ questioned the propriety of the rate case as the forum for GAS, Inc.'s issues, stated that GAS, Inc.'s intervention would unduly delay the proceedings, and reasoned that GAS, Inc.'s interests were adequately represented by intervening state agencies. The Commission agrees with the ALJ's reasoning, as it is more fully developed below.

The Propriety of the Forum

GAS, Inc. seeks to become a gas supplier to Minnegasco. As a supplier, GAS, Inc. would be in competition with Minnegasco's affiliate and primary gas supplier, Arkla, Inc.

In its petition, GAS, Inc. argued that its intervention would help assure that actual competition exists in the process whereby Minnegasco decides from whom and on what terms it will purchase its natural gas supplies. According to GAS, Inc., such intervention would be in the best interests of all Minnegasco ratepayers. GAS, Inc. sought to develop evidence that Minnegasco has shown "undue preference for affiliate arrangements and arbitrary dismissal of competing proposals [that] has resulted in a lessening of competition and potentially higher costs to all customers." GAS, Inc.'s Petition to Intervene at p. 2.

In its October 2, 1992, Motion to Enlarge Time to Object to Petition to Intervene, Minnegasco argued that GAS, Inc.'s intent was actually

to use this proceeding as a mechanism to discover trade secret and competitive information and to raise challenges to Minnegasco's natural gas purchasing practices which are properly the subject of other pending or past Commission dockets.

Minnegasco argued that there are at least two open Commission dockets in which the issues raised by GAS, Inc. could be more properly considered.

The ALJ agreed with Minnegasco that the concerns raised by GAS, Inc. would be best addressed outside the context of the general rate case proceeding. The ALJ noted Minn. Stat. § 216B.16, subd. 7, which provides for automatic energy cost adjustments, including "direct costs for natural gas delivered." Minn. Rules, Parts 7824.2390-.2920 provide for, among other things, a yearly Department review and report of utilities' annual automatic adjustment reports. The ALJ also cited the affiliated interest statute, Minn. Stat. § 216B.48, subd. 3. That statute, along with Minn. Rules, Parts 7825.1900-.2300, calls for Commission review of each contract or arrangement between the public utility and its affiliated interest. The ALJ stated that these statutes and rules would provide a better forum for the consideration of GAS, Inc.'s issues than the general rate case.

The Commission agrees with and adopts the ALJ's reasoning on this point. The Commission notes that there are further opportunities for review of gas purchasing in the quarterly PGA summaries prepared by the Department for the Commission, and in miscellaneous tariff filings required for changes in demand entitlements. These review processes, as well as those cited by the ALJ, will provide an opportunity for consideration of the

competitive gas purchasing issues raised by GAS, Inc. The Commission also agrees with the ALJ, who stated that "the decision of what to include in rate case dockets varies with the particulars of each situation." ALJ's memorandum at p. 4. While the above-cited dockets are the proper forum in this case for consideration of GAS, Inc.'s issues, the Commission will continue to decide what issues to include in a general rate case on a case by case basis.

Rate Case Timing

The ALJ noted that Minnegasco had not filed a general rate case for ten years prior to the present proceeding. The ALJ also stated that discovery requests were numerous and voluminous, and that the complex issues raised by the parties would make the statutory 10-month deadline difficult to meet. The ALJ stated that GAS, Inc.'s intervention "would prolong the hearing in a significant way." Because the issues raised by GAS, Inc. would be more properly addressed outside of the general rate case, there was no need to complicate and delay the proceeding by the inclusion of these issues.

The Commission agrees with the ALJ's reasoning on this issue. The Commission also notes that it would be difficult if not impossible for GAS, Inc. to intervene meaningfully in the rate case at this time. The ALJ deferred consideration of GAS, Inc.'s Motion to Compel Discovery, pending resolution of the certified motions. Answers to GAS, Inc.'s information requests remain outstanding. Since the deadline for direct intervenor testimony was October 26, 1992, it is unlikely that GAS, Inc. could fully participate as an intervenor in this rate case. GAS, Inc. would be better advised to direct its efforts to exploration of its issues in the venues listed in the preceding section.

Representation of the Company's Interests by State Agencies

The ALJ stated that GAS, Inc.'s interests, to the extent they were not addressed in other dockets and required determination in a general rate case, were common to other small business customers of Minnegasco. As such, these issues were represented adequately by the Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), two intervenors charged with the duty of representing small business ratepayers.

The Commission agrees with the ALJ's reasoning. In these particular circumstances, the interests of GAS, Inc. will be represented by the Department and the RUD-OAG within the general rate case. Minn. Rules, Part 1400.6200, subp. 3 specifies that upon a party filing an objection to a petition for intervention:

The judge shall allow intervention upon a proper showing

pursuant to subpart 1 unless the judge finds that the petitioner's interest is adequately represented by one or more parties participating in the case.

The ALJ determined that GAS, Inc.'s issues would be adequately addressed in the aforementioned dockets outside of the general rate case. The ALJ also determined that GAS, Inc.'s interests would be represented by the Department and the RUD-OAG within the general rate case. The ALJ therefore properly granted Minnegasco's motion to deny GAS, Inc.'s petition to intervene.

Commission Determination

The Commission adopts the reasoning of the ALJ stated in the ALJ's memorandum and reviewed in this Order, and will grant the two motions certified to the Commission: Minnegasco's Motion for Enlargement of Time to Object to the Intervention of GAS, Inc. and Minnegasco's Motion to Deny GAS, Inc.'s Petition to Intervene.

ORDER

1. Minnegasco's Motion for Enlargement of Time to Object to the Intervention of GAS, Inc. is granted.
2. Minnegasco's Motion to Deny GAS, Inc.'s Petition to Intervene is granted.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)